cause the road to subside, but the breaking of the surface of the highway by such owner is a use of the highway which is a nuisance per se.

The court said in part: "As the ownership of the coal is not in dispute, it is clear that when the road was laid out the owner had full dominion and control over the coal with the right of an absolute owner to it, subject, however, to the easement in favor of the public. He has the right to mine and remove it, but the removal must be done in such manner as not to injure the surface of the highway, or create a condition whereby injury may later follow. The servient estate must always be in such condition that the road may be continued as a highway for the traveling public in the future. From the undisputed facts this servient estate owed to the road above such support as will at all times preserve and keep it from subsiding. An abutting owner may use the land (the surface) for his own purposes in any way not inconsistent with the public easement, and is entitled to all profit and advantage that may be derived therefrom. 13 R. C. L. § 107, p. 121. 'The rights and title of an abutting owner * * * are subject * * * to the easement and servitude in favor of the public, and to the right of the public authorities to occupy the space above [and below] the surface of the way for any purpose within the scope of the public uses to which highways may be put.' 13 R. C. L. § 108, p. 123. But above and beyond this reasonable use of the public, the owner undoubtedly retains the right to use in his land, and so it has been held, where one owns the fee in the minerals under the surface of the highway, and the mines on the surface adjacent thereto, they may work such mines, but must do so in such way as not to cause the road to subside. 17 E. R. C. p. 554.

"The coal under the highway could not be removed without disturbing the surface; to mine it the surface itself, which includes the highway, must be physically displaced, stripped so that the coal might be taken out. The company's right to do this was subordinate to the right of the public to the highway. This use, encroachment, or obstruction by the company was a nuisance per se, which could not be legalized unless the highway ceased to exist as such; in that event, the land reverts to the owners and its use is no longer a public one."

Streets and Highways—Speed Ordinance Inapplicable to Officers in Pursuit of Criminals.—In State *v.* Gorham, 188 Pac. 457, the Supreme Court of Washington, held that the violation of speed ordinances of a city cannot be charged against an acting deputy sheriff of the county using a motorcycle in pursuit of an automobile thief; peace officers being answerable only for abuse of their privileges in respect to such local regulations.

The court said in part: "That the enforcement of statutory or

ordinance provision limiting the speed at which a mortor-propelled vehicle shall be driven over a public highway against a peace officer would have a tendency to hamper him in the performance of his official duties can hardly be doubted. The case in hand affords an illustration. Here the felon was fleeing with a stolen automobile. Naturally he would pay but little regard to the minor of fense of exceeding the speed limit. And, if the sheriff must confine himself to that limit, pursuit in the manner adopted would have been useless, since the felon could not have been overtaken. The rule contended for would also hinder the public peace officer in enforcing the statutes regulating traffic upon the state highways. These statutes contain somewhat stringent regulations as to the speed a motor-propelled vehicle may be driven over them, and contain no exception in favor of the peace officers whose duty it is made to enforce them. If these officers may not pursue and overtake one violating the regulations without themselves becoming amenable to the penalties imposed by them, the old remedy of hue and cry is not available in such instances, and many offenders who are now brought to answer will escape.

"It is not meant to be asserted, of course, that there are no restrictions upon the speed a sheriff or a peace officer may travel in the pursuit of a fleeing criminal. Such officers may abuse their privileges in this respect as well as in others and must answer for such abuse. What is meant to be said is that the statutory regulations as to speed do not apply to them, and that for an abuse of their privileges in this respect they must answer in the manner they are required to answer for other abuses of privilege.

"The diligence of counsel has not brought to our attention any case where the precise question presented has been determined. Courts generally hold, however, in the somewhat analogous instance of a fire department responding to an alarm of fire, that ordinances regulating the limit of speed which a vehicle may be driven over the streets are inapplicable. Farley *v.* City of New York, 152 N. Y. 222, 46 N. E. 506, 57 Am. St. Rep. 511; Hubert *v.* Granzow, 131 Minn. 361, 155 N. W. 204, Ann. Cas. 1917D, 563; Kansas City *v.* McDonald, 60 Kan. 481, 57 Pac. 123, 45 L. R. A. 429; Devine *v.* City of Chicago, 172 Ill. App. 246.

"In State *v.* Burton, 41 R. I. 303, 103 Atl. 962, L. R. A. 1918F, 559, it was held that a member of the United States Naval Reserve Force, on duty as a dispatch driver, was not amenable to the speed laws of the state while on his way to deliver a message at the command of his superior officer which that officer deemed urgent. The case was rested on principle of public necessity, and in this sense is applicable to the question presented here. A contrary case is Keevil *v.* Ponsford (Tex. Civ. App.), 173 S. W. 518."